

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 13-848V
(Not to be published)

DEBBIE HARRIS,

* Filed: October 30, 2014

Petitioner,

* Entitlement; Off-Table Injury;
* Conceded; Decision by Proffer;
* Damages; Trivalent Influenza (“flu”)
* Vaccine; Shoulder Injury Related
* to Vaccine Administration
* (“SIRVA”)

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

*

Respondent.

*

Ronald Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for Petitioner.

Lara Englund, U.S. Dep’t of Justice, Washington, D.C., for Respondent.

DECISION FINDING ENTITLEMENT AND AWARDING DAMAGES¹

On October 29, 2013, Debbie Harris filed a petition seeking compensation under the National Vaccine Injury Compensation Program.² Petitioner alleged that she suffered from a shoulder injury related to vaccine administration (“SIRVA”) as a result of receiving the trivalent influenza (“flu”) vaccine on November 18, 2011.

¹ Because this decision contains a reasoned explanation for my action in this case, it will be posted on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the inclusion of certain kinds of confidential information. To do so, Vaccine Rule 18(b) provides that each party has 14 days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, the decision will be available to the public. *Id.*

² The National Vaccine Injury Compensation Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755 (codified as amended, 42 U.S.C.A. § 300aa-10 – 34 (2006)) [hereinafter “Vaccine Act” or “the Act”]. Individual sections references hereafter will be to § 300aa of the Act.

In her Rule 4(c) Report, filed on January 23, 2014, Respondent conceded that Petitioner's claim was compensable under the Act. Respondent specifically stated that the Division of Vaccine Injury Compensation ("DVIC"), Department of Health and Human Services, had reviewed the facts of this case and had concluded that Petitioner's injury was consistent with SIRVA. Accordingly, DVIC agreed that Petitioner's claim satisfied the *Althen* requirements and that she had proven her injury was caused-in-fact by a vaccination. Respondent indicated that no other causes for Petitioner's condition had been identified and the statutory six month sequelae requirement had been satisfied. Therefore, the Rule 4(c) Report indicated that once Petitioner established that no one had previously collected an award or settlement of civil damages on her behalf, she would have satisfied the legal prerequisites for compensation under the Act, and would be entitled to an award of damages.

In view of Respondent's concession, on January 24, 2014, I issued an order indicating that this case was ready for the damages phase.

On October 29, 2014, Respondent filed a proffer recommending an award of compensation to Petitioner in accordance with the life care items of compensation as illustrated by the spreadsheet analysis attached to the proffer as Tab A (a copy of which is also attached here). I have reviewed the file, and based upon that review, I conclude that the Respondent's proffer was reasonable. I therefore adopt it as my decision in awarding damages on the terms set forth therein.

The proffer awards Petitioner:

- A lump sum of \$207,030.12 representing the discounted present value of life care expenses expected to be occurred over Debbie Harris's life (\$69,717.83), pain and suffering (\$135,000.00), and past unreimbursable expenses (\$2,312.29), in the form of a check payable to Petitioner, Debbie Harris. This amount accounts for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which Petitioner would be entitled.

Proffer § 2.

Based on my own review of the record (*See* § 300aa-13(a)(1); 42 C.F.R. § 100.3(a)(I), I find that Petitioner is entitled to compensation for an injury that was caused-in-fact by a covered vaccine. 42 C.F.R. §§ 100.3(a)(XIV), 100.3(b)(2). I therefore approve a Vaccine Program award in the requested amounts set forth above to be made to Petitioner. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.³

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by each filing (either jointly or separately) a notice renouncing their right to seek review.

IT IS SO ORDERED.

/s/ Brian H. Corcoran
Brian H. Corcoran
Special Master

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

DEBBIE HARRIS,)
Petitioner,)
v.) No. 13-848V
) Special Master Brian H. Corcoran
SECRETARY OF)
HEALTH AND HUMAN SERVICES,)
Respondent.)
)

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Life Care Items

Respondent engaged life care planner Jacqueline Morris, RN, BSN, CRRN, CNLCP, and petitioner engaged Maureen Clancy, RN, BSN, CLCP, to provide an estimation of petitioner's future vaccine-injury related needs. For the purposes of this proffer, the term "vaccine related" is as described in respondent's Rule 4(c) Report filed January 23, 2014. All life care items of compensation are supported by the evidence and are illustrated by the spreadsheet analysis entitled Appendix A: Discounted Present Value of Life Care Items of Compensation for Debbie Harris, attached hereto as Tab A.¹ Respondent proffers that Debbie Harris should be awarded all life care items of compensation as illustrated by the spreadsheet analysis attached at Tab A. Petitioner agrees.

¹ The chart at Tab A illustrates projected annual life care expenses, discounted over life expectancy at the net discount rates indicated.

B. Lost Earnings

Petitioner has not submitted a claim for lost earnings and has not submitted any evidence that would demonstrate that she is entitled to compensation for past or future lost earnings. Thus, petitioner is not entitled to an award for lost earnings. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that Debbie Harris should be awarded \$135,000.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. *See 42 U.S.C. § 300aa-15(a)(4).* Petitioner agrees.

D. Past Unreimbursable Expenses

Evidence supplied by Debbie Harris documents her expenditure of past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that Debbie Harris should be awarded past unreimbursable expenses in the amount of \$2,312.29. Petitioner agrees.

E. Medicaid Lien

Petitioner represents that there are no Medicaid liens outstanding against Debbie Harris.

II. Form of the Award

The parties recommend that the compensation provided to Debbie Harris should be made through a lump sum payment as described below, and request that the special master's decision and the Court's judgment award the following:²

- A. A lump sum payment of \$207,030.12, representing the discounted present value of life care expenses expected to be incurred over Debbie Harris's life (\$69,717.83),

² Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.

pain and suffering (\$135,000.00), and past unreimbursable expenses (\$2,312.29), in the form of a check payable to petitioner, Debbie Harris.

III. Summary of Recommended Payments Following Judgment

A. Lump sum paid to petitioner, Debbie Harris: **\$207,030.12**

Respectfully submitted,

JOYCE R. BRANDA
Acting Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
Deputy Director
Torts Branch, Civil Division

ALTHEA W. DAVIS
Senior Trial Counsel
Torts Branch, Civil Division

s/ LARA A. ENGLUND
LARA A. ENGLUND
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel: (202) 307-3013

DATED: October 30, 2014

APPENDIX A: DISCOUNTED PRESENT VALUE OF LIFE CARE ITEMS OF COMPENSATION FOR DEBBIE HARRIS

Petitioner: Debbie Harris, D.O.B. 12/09/1960

Total Discounted Present Value of Life Care Items: \$69,717.83

Annual Amounts Follow Anniversary Dates of Judgment

and discounted at 2% NDR for non-medical and 1% NDR for medical items

Year	Year from Judgment	Age	Group Health	Medicare Part A & B	Medicare Part B Deductible	Medigap 1%	Medicare Part D	Orthopedic 1%*	Pain Specialist 1%	MRI 1%	Motrin IB 2%	PT Eval 2%*	OT Eval 2%	Grab Bars 2%	Adap. Equip 2%
2014	0	54	-	-	-	-	-	118.00	-	-	10.49	255.00	-	-	32.12
2015	1	55	-	-	-	-	-	-	-	-	10.28	-	-	-	3.15
2016	2	56	-	-	-	-	-	-	-	-	10.08	-	-	-	3.09
2017	3	57	-	-	-	-	-	114.53	-	-	9.88	240.29	-	-	3.02
2018	4	58	-	-	-	-	-	-	-	-	9.69	-	-	-	2.97
2019	5	59	-	-	-	-	-	-	-	891.52	9.50	-	-	-	2.91
2020	6	60	-	-	-	-	-	111.16	-	-	9.31	226.43	-	-	2.85
2021	7	61	-	-	-	-	-	-	-	-	9.13	-	-	-	2.79
2022	8	62	-	-	-	-	-	-	-	-	8.95	-	-	-	2.74
2023	9	63	-	-	-	-	-	107.89	-	-	8.78	213.37	-	-	2.69
2024	10	64	-	-	-	-	-	-	-	-	8.61	-	-	-	2.63
2025	11	65	-	-	131.76	-	-	-	-	-	8.44	-	-	-	2.58
2026	12	66	-	-	130.46	-	-	20.94	-	-	8.27	40.21	-	-	2.53
2027	13	67	-	-	129.16	-	-	6.92	-	-	8.11	13.14	-	-	2.48
2028	14	68	-	-	127.88	-	-	6.85	-	-	7.95	12.88	-	-	2.43
2029	15	69	-	-	126.62	-	-	6.78	-	-	7.79	12.63	-	-	2.39
2030	16	70	-	-	125.36	-	-	6.71	-	-	7.64	12.38	-	-	2.34
2031	17	71	-	-	124.12	-	-	6.65	-	-	7.49	12.14	-	-	2.29
2032	18	72	-	-	122.89	-	-	6.58	-	-	7.34	11.90	-	-	2.25
2033	19	73	-	-	121.68	-	-	6.51	-	-	7.20	11.67	-	-	2.20
2034	20	74	-	-	120.47	-	-	6.45	-	-	7.06	11.44	-	-	2.16
2035	21	75	-	-	119.28	-	-	6.39	-	-	6.92	11.22	-	-	2.12
2036	22	76	-	-	118.10	-	-	6.32	-	-	6.79	11.00	-	-	2.08
2037	23	77	-	-	116.93	-	-	6.26	-	-	6.65	10.78	-	-	2.04
2038	24	78	-	-	115.77	-	-	6.20	-	-	6.52	10.57	-	-	2.00
2039	25	79	-	-	114.63	-	-	6.14	-	-	6.39	10.36	-	-	1.96
2040	26	80	-	-	113.49	-	-	6.08	-	-	6.27	10.16	-	-	1.92
2041	27	81	-	-	112.37	-	-	6.02	-	-	6.15	9.96	-	-	1.88
2042	28	82	-	-	111.25	-	-	5.96	-	-	6.03	9.76	-	-	1.84
2043	29	83	-	-	110.15	-	-	5.90	-	-	5.91	9.57	-	-	1.81
			0.00	0.00	2,292.37	0.00	0.00	581.24	0.00	891.52	239.62	1,166.86	0.00	0.00	102.26

APPENDIX A: DISCOUNTED PRESENT VALUE OF LIFE CARE ITEMS OF COMPENSATION FOR DEBBIE HARRIS

Petitioner: Debbie Harris, D.O.B. 12/09/1960

Total Discounted Present Value of Life Care Items: \$69,717.83

Annual Amounts Follow Anniversary Dates of Judgment

and discounted at 2% NDR for non-medical and 1% NDR for medical items

Year	Year from Judgment	Age	Home maker/ Personal										Mileage: Ortho- pedic 2%	Mileage: Pain Specialist 2%
			Computer Equip 2%	Step Stool 2%	Rubber Bath Mat 2%	Heat Pad 2%	Handyman 2%	Snow Removal 2%	Car Wash 2%	Tree Maint 2%	Lawn mower 2%			
2014	0	54	400.00	18.97	-	-	2,160.00	-	416.00	125.00	220.00	314.14	1.10	-
2015	1	55	-	1.86	-	-	2,117.65	-	407.84	122.55	215.69	-	0.36	-
2016	2	56	-	1.83	-	-	2,076.12	-	399.85	120.15	211.46	-	0.36	-
2017	3	57	-	1.79	-	-	2,035.42	-	392.01	117.79	207.31	-	0.35	-
2018	4	58	-	1.76	-	-	1,995.51	-	384.32	115.48	203.25	-	0.34	-
2019	5	59	-	1.72	-	-	1,956.38	-	376.78	113.22	199.26	284.53	0.34	-
2020	6	60	177.59	1.69	-	-	1,918.02	-	369.40	111.00	195.35	-	0.33	-
2021	7	61	-	1.65	-	-	1,880.41	-	362.15	108.82	191.52	-	0.32	-
2022	8	62	-	1.62	-	-	1,843.54	-	355.05	106.69	187.77	-	0.32	-
2023	9	63	-	1.59	-	-	1,807.39	-	348.09	104.59	184.09	-	0.31	-
2024	10	64	-	1.56	-	-	1,771.95	-	341.26	102.54	180.48	257.70	0.30	-
2025	11	65	-	1.53	-	-	1,881.98	-	334.57	100.53	176.94	-	0.30	-
2026	12	66	-	1.50	-	-	1,845.07	-	328.01	98.56	173.47	-	0.29	-
2027	13	67	-	1.47	-	-	1,808.90	-	321.58	96.63	170.07	-	0.29	-
2028	14	68	-	1.44	-	-	1,773.43	-	315.28	94.73	166.73	-	0.28	-
2029	15	69	-	1.41	-	-	1,738.65	-	309.09	92.88	163.46	-	0.27	-
2030	16	70	-	1.38	-	-	1,704.56	-	303.03	91.06	160.26	-	0.27	-
2031	17	71	-	1.36	-	-	1,671.14	-	-	-	-	-	0.26	-
2032	18	72	-	1.33	-	-	1,638.37	-	-	-	-	-	0.26	-
2033	19	73	-	1.30	-	-	1,606.25	-	-	-	-	-	0.25	-
2034	20	74	-	1.28	-	-	1,574.75	-	-	-	-	-	0.25	-
2035	21	75	-	1.25	-	-	1,543.88	-	-	-	-	-	0.24	-
2036	22	76	-	1.23	-	-	1,513.60	-	-	-	-	-	0.24	-
2037	23	77	-	1.20	-	-	1,483.92	-	-	-	-	-	0.23	-
2038	24	78	-	1.18	-	-	1,454.83	-	-	-	-	-	0.23	-
2039	25	79	-	1.16	-	-	1,426.30	-	-	-	-	-	0.23	-
2040	26	80	-	1.14	-	-	1,398.34	-	-	-	-	-	0.22	-
2041	27	81	-	1.11	-	-	1,370.92	-	-	-	-	-	0.22	-
2042	28	82	-	1.09	-	-	1,344.04	-	-	-	-	-	0.21	-
2043	29	83	-	1.07	-	-	1,317.68	-	-	-	-	-	0.21	-
			577.59	60.47	0.00	0.00	51,659.00	0.00	6,064.31	1,822.22	3,207.11	856.37	9.18	0.00

APPENDIX A: DISCOUNTED PRESENT VALUE OF LIFE CARE ITEMS OF COMPENSATION FOR DEBBIE HARRIS

Petitioner: Debbie Harris, D.O.B. 12/09/1960

Total Discounted Present Value of Life Care Items: \$69,717.83

Annual Amounts Follow Anniversary Dates of Judgment

and discounted at 2% NDR for non-medical and 1% NDR for medical items

Year	Year from Judgment	Age	Mileage: MRI 2%	Mileage: PT 2%	Mileage: OT 2%	Mileage: Counselor 2%	Mileage: YMCA 2%	Car Mods 2%	Annual Total
2014	0	54	-	7.51	-	-	-	22.95	4,101.28
2015	1	55	-	2.45	-	-	-	4.50	2,886.33
2016	2	56	-	2.40	-	-	-	4.41	2,829.75
2017	3	57	-	2.36	-	-	-	4.33	3,129.08
2018	4	58	-	2.31	-	-	-	4.24	2,719.87
2019	5	59	2.37	2.26	-	-	-	4.16	3,844.95
2020	6	60	-	2.22	-	-	-	4.08	3,129.43
2021	7	61	-	2.18	-	-	-	4.00	2,562.97
2022	8	62	-	2.13	-	-	-	3.92	2,512.73
2023	9	63	-	2.09	-	-	-	3.84	2,784.72
2024	10	64	-	2.05	-	-	-	3.77	2,672.85
2025	11	65	-	2.01	-	-	-	3.69	2,644.33
2026	12	66	-	1.97	-	-	-	3.62	2,654.90
2027	13	67	-	1.93	-	-	-	3.55	2,564.23
2028	14	68	-	1.89	-	-	-	3.48	2,515.25
2029	15	69	-	1.86	-	-	-	3.41	2,467.24
2030	16	70	-	1.82	-	-	-	3.34	2,420.15
2031	17	71	-	1.79	-	-	-	3.28	1,830.52
2032	18	72	-	1.75	-	-	-	3.21	1,795.88
2033	19	73	-	1.72	-	-	-	3.15	1,761.93
2034	20	74	-	1.68	-	-	-	3.09	1,728.63
2035	21	75	-	1.65	-	-	-	3.03	1,695.98
2036	22	76	-	1.62	-	-	-	2.97	1,663.95
2037	23	77	-	1.59	-	-	-	2.91	1,632.51
2038	24	78	-	1.55	-	-	-	2.85	1,601.70
2039	25	79	-	1.52	-	-	-	2.80	1,571.49
2040	26	80	-	1.49	-	-	-	2.74	1,541.85
2041	27	81	-	1.46	-	-	-	2.69	1,512.78
2042	28	82	-	1.44	-	-	-	2.64	1,484.26
2043	29	83	-	1.41	-	-	-	2.58	1,456.29
			2.37	62.11	0.00	0.00	0.00	123.23	69,717.83